

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

DON O. NICHOLS and TERRY A.  
NICHOLS, and LAST DAY TRUST,

Defendants.

NO: 2:13-CV-0167-TOR

ORDER GRANTING UNITED  
STATES' MOTION FOR ENTRY OF  
FORECLOSURE AND JUDICIAL  
SALE

BEFORE THE COURT is Plaintiff's motion for order of sale (ECF No. 46).

This matter was submitted for consideration without oral argument. The Court has reviewed the briefing and the record and the files herein, and is fully informed.

BACKGROUND

On May 29, 2013, the United States filed its first amended complaint seeking: (1) judgment against Defendants Don and Terry Nichols ("the Nichols") for unpaid federal income taxes and civil penalties for the years 1999; 2001-2009; (2) a determination that real property purchased by the Nichols and located near

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1 Reardon, Washington (the “subject property”), had been fraudulently transferred to  
2 Defendant Last Day Trust; (3) in the alternative, a determination to what extent  
3 Last Day Trust holds title to the subject property as the nominee or alter ego of the  
4 Nichols; (4) a determination that the United States has valid tax liens against the  
5 Nichols’ property; and (5) an order foreclosing on the subject property to satisfy  
6 the tax liens. ECF No. 3.

7 On September 25, 2015, after stipulation, the Court entered judgment in  
8 favor of the United States and against Defendants in the amount of \$155,018.83,  
9 plus interest accruing after July 14, 2015 as provided by law. ECF No. 44; *see* 26  
10 U.S.C. § 6621. *See also* 28 U.S.C. § 1961(c)(1) (explaining that § 6621 applies in  
11 “any internal revenue tax case”).

12 The United States now moves the Court for an order of foreclosure and  
13 judicial sale. ECF No. 46. The Nichols filed a response in partial opposition.  
14 ECF No. 48.

## 15 DISCUSSION

16 The Nichols’ request that the Court deny the United States’ motion and  
17 direct the United States to “enter into a reasonable monetary plan for defendants to  
18 make payments on their tax debt.” *Id.* at 3.

19 Under 26 U.S.C. § 7403, the United States Government is empowered to  
20 enforce its tax liens against a delinquent taxpayer by requesting the judicial sale of

1 the taxpayer's real property. *United States v. Rodgers*, 461 U.S. 677, 691-92  
2 (1983). A district court "may decree a sale of such property." 26 U.S.C. §  
3 7403(c). "Section 7403 affords district courts limited equitable discretion in  
4 determining whether to order the sale of property to satisfy delinquent tax  
5 liabilities." *United States v. Gibson*, 817 F.2d 1406, 1407 (9th Cir. 1987) (citing  
6 *Rodgers*, 461 U.S. at 680). "District courts may exercise this limited discretion in  
7 individual cases to take into account both the government's interest in prompt and  
8 certain collection of delinquent taxes and the possibility that innocent third parties  
9 will be unduly harmed by that effort." *Id.* A district court's "limited discretion  
10 accorded by § 7403 should be exercised rigorously and sparingly." *Rodgers*, 461  
11 U.S. at 711.

12 The Nichols have presented no evidence that any third party would be  
13 unduly harmed by the Plaintiff's foreclosure of the subject property. The Nichols  
14 contend they will suffer hardship if the sale is to go forward. *See* ECF No. 48 at 2.  
15 (arguing that the Nichols are prejudiced by a forced sale because, among other  
16 things, they are in their late sixties, retired, have health issues, and have lived in the  
17 home for many years). However, the Supreme Court has stated that there are  
18 "virtually no circumstances ... in which it would be permissible to refuse to  
19 authorize a sale simply to protect the interests of the delinquent taxpayer himself or  
20 herself." *Rodgers*, 461 U.S. at 709. Thus, the Nichols do not provide the Court

1 with a valid reason to exercise its “limited discretion” to deny the United States’  
2 motion.

3 Here, the United States has complied with the requirements of § 7403 for  
4 entry of an order of judicial sale. Defendants have failed to pay their federal tax  
5 liabilities, and the Court has entered judgment against Defendants. ECF Nos. 44;  
6 45. The United States commenced this action in the district court, and all parties  
7 “having liens upon or claiming any interest in the property involved in such  
8 action,” 26 U.S.C. § 7403(b), have been named as Defendants. *See* ECF No. 1 ¶¶  
9 5-10. Accordingly, the United States is entitled to foreclose its valid federal tax  
10 liens on the real property at issue as a matter of law. The Court will issue a  
11 separate order of sale.

12 **ACCORDINGLY, IT IS HEREBY ORDERED:**

13 The District Court Executive is hereby directed to enter this Order and  
14 furnish copies to the parties.

15 **DATED** November 6, 2015.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge